

57-1-1. Definitions.

As used in this title:

(1) "Certified copy" means a copy of a document certified by its custodian to be a true and correct copy of the document or the copy of the document maintained by the custodian, where the document or copy is maintained under the authority of the United States, the state of Utah or any of its political subdivisions, another state, a court of record, a foreign government, or an Indian tribe.

(2) "Document" means every instrument in writing, including every conveyance, affecting, purporting to affect, describing, or otherwise concerning any right, title, or interest in real property, except wills and leases for a term not exceeding one year.

(3) "Real property" or "real estate" means any right, title, estate, or interest in land, including all nonextracted minerals located in, on, or under the land, all buildings, fixtures and improvements on the land, and all water rights, rights-of-way, easements, rents, issues, profits, income, tenements, hereditaments, possessory rights, claims, including mining claims, privileges, and appurtenances belonging to, used, or enjoyed with the land or any part of the land.

(4) "Stigmatized" means:

(a) the site or suspected site of a homicide, other felony, or suicide;

(b) the dwelling place of a person infected, or suspected of being infected, with the Human Immunodeficiency Virus, or any other infectious disease that the Utah Department of Health determines cannot be transferred by occupancy of a dwelling place; or

(c) property that has been found to be contaminated, and that the local health department has subsequently found to have been decontaminated in accordance with Title 19, Chapter 6, Part 9, Illegal Drug Operations Site Reporting and Decontamination Act.

Amended by Chapter 249, 2004 General Session

57-1-2. Words of inheritance not required to pass fee.

The term "heirs," or other technical words of inheritance or succession, are not requisite to transfer a fee in real estate.

No Change Since 1953

57-1-3. Grant of fee simple presumed.

A fee simple title is presumed to be intended to pass by a conveyance of real estate, unless it appears from the conveyance that a lesser estate was intended.

No Change Since 1953

57-1-4. Attempted conveyance of more than grantor owns -- Effect.

A conveyance made by an owner of an estate for life or years, purporting to convey a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer.

No Change Since 1953

57-1-5. Creation of joint tenancy presumed -- Tenancy in common -- Severance of joint tenancy -- Tenants by the entirety -- Tenants holding as community property.

(1) (a) (i) Beginning on May 5, 1997, every ownership interest in real estate granted to two persons in their own right who are designated as husband and wife in the granting documents is presumed to be a joint tenancy interest with rights of survivorship, unless severed, converted, or expressly declared in the grant to be otherwise.

(ii) Except as provided in Subsection (1)(a)(iii), joint tenancy may be established between two or more people.

(iii) Joint tenancy may not be established between a person and an entity or organization, including:

(A) a corporation;

(B) a trustee of a trust; or

(C) a partnership.

(iv) Joint tenancy may not be established between an entity or organization and another entity or organization.

(b) Every ownership interest in real estate that does not qualify for the joint tenancy presumption as provided in Subsection (1)(a) is presumed to be a tenancy in common interest unless expressly declared in the grant to be otherwise.

(2) (a) Use of words "joint tenancy" or "with rights of survivorship" or "and to the survivor of them" or words of similar import means a joint tenancy.

(b) (i) Use of words "tenancy in common" or "with no rights of survivorship" or "undivided interest" or words of similar import declare a tenancy in common.

(ii) Use of words "and/or" in the context of an ownership interest declare a tenancy in common unless accompanied by joint tenancy language described in Subsection (2)(a), which creates a joint tenancy.

(3) A person who owns real property creates a joint tenancy in himself or herself and another or others:

(a) by making a transfer to himself or herself and another or others as joint tenants by use of the words as provided in Subsection (2)(a); or

(b) by conveying to another person or persons an interest in land in which an interest is retained by the grantor and by declaring the creation of a joint tenancy by use of the words as provided in Subsection (2)(a).

(4) In all cases, the interest of joint tenants shall be equal and undivided.

(5) (a) Except as provided in Subsection (5)(b), if a joint tenant makes a bona fide conveyance of the joint tenant's interest in property held in joint tenancy to himself or herself or another, the joint tenancy is severed and converted into a tenancy in common.

(b) If there is more than one joint tenant remaining after a joint tenant severs a joint tenancy under Subsection (5)(a), the remaining joint tenants continue to hold their interest in joint tenancy.

(6) The amendments to this section in Laws of Utah 1997, Chapter 124, have no retrospective operation and shall govern instruments executed and recorded on or after May 5, 1997.

(7) Tenants by the entirety are considered to be joint tenants.

(8) Tenants holding title as community property are considered to be joint tenants.

Amended by Chapter 88, 2011 General Session

57-1-5.1. Termination of an interest in real estate -- Affidavit.

(1) Joint tenancy, tenancy by the entirety, life estate, or determinable or conditional interest in real estate may be terminated by an affidavit that:

(a) meets the requirements of Subsection (2); and

(b) is recorded in the office of the recorder of the county in which the affected property is located.

(2) Each affidavit required by Subsection (1) shall:

(a) cite the interest that is being terminated;

(b) contain a legal description of the real property that is affected;

(c) reference the entry number and the book and page of the instrument creating the interest to be terminated; and

(d) if the termination is the result of a death, have attached as an exhibit, a copy of the death certificate or other document issued by a governmental agency as described in Section 75-1-107 certifying the death.

(3) The affidavit required by Subsection (1) may be in substantially the following form:

"Affidavit

State of Utah)
) ss
County of _____)

I, (name of affiant), being of legal age and being first duly sworn, depose and state as follows:

(The name of the deceased person), the decedent in the attached certificate of death or other document witnessing death is the same person as (the name of the deceased person) named as a party in the document dated (date of document) as entry _____ in book _____, page _____ in the records of the (name of county) County Recorder.

This affidavit is given to terminate the decedent's interest in the following described property located in _____ County, State of Utah: (description of the property).

Dated this _____ day of _____, _____.

(Signature of affiant)

Subscribed to and sworn before me this _____ day of _____,

_____.

Notary public"

Amended by Chapter 381, 2010 General Session

57-1-10. After-acquired title passes.

(1) If any person conveys any real estate by conveyance purporting to convey the real estate in fee simple absolute, and at the time of the conveyance the person does not have the legal estate in the real estate, but afterwards acquires the legal estate:

(a) the legal estate subsequently acquired immediately passes to the grantee, the grantee's heirs, successors, or assigns; and

(b) the conveyance is as valid as if the legal estate had been in the grantor at the time of the conveyance.

(2) Subsection (1) does not apply to a conveyance by quitclaim deed.

Amended by Chapter 287, 2007 General Session

57-1-11. Claimant out of possession may convey.

Any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein in the same manner and with the same effect as if he were in the actual possession thereof.

No Change Since 1953

57-1-12. Form of warranty deed -- Effect.

(1) Conveyances of land may be substantially in the following form:

WARRANTY DEED

____ (here insert name), grantor, of ____ (insert place of residence), hereby conveys and warrants to ____ (insert name), grantee, of ____ (insert place of residence), for the sum of ____ dollars, the following described tract ____ of land in ____ County, Utah, to wit: (here describe the premises).

Witness the hand of said grantor this ____ (month\day\year).

(2) A warranty deed when executed as required by law shall have the effect of a conveyance in fee simple to the grantee, the grantee's heirs, and assigns:

(a) of the premises named in the warranty deed;

(b) of all the appurtenances, rights, and privileges belonging to the premises named in the warranty deed; and

(c) with covenants from the grantor, the grantor's heirs, and personal representatives, that:

(i) the grantor lawfully owns fee simple title to and has the right to immediate possession of the premises;

(ii) the grantor has good right to convey the premises;

(iii) the grantor guarantees the grantee, the grantee's heirs, and assigns in the quiet possession of the premises;

(iv) the premises are free from all encumbrances; and

(v) the grantor, the grantor's heirs, and personal representatives will forever warrant and defend the title of the premises in the grantee, the grantee's heirs, and assigns against all lawful claims whatsoever.

(3) Any exception to the covenants described in Subsection (2)(c) may be briefly inserted in the warranty deed following the description of the land.

Amended by Chapter 55, 2007 General Session

57-1-12.5. Form of special warranty deed -- Effect.

(1) Conveyances of land may be substantially in the following form:

SPECIAL WARRANTY DEED

____ (here insert name), grantor, of ____ (insert place of residence), hereby conveys and warrants against all who claim by, through, or under the grantor to ____ (insert name), grantee, of ____ (insert place of residence), for the sum of ____ dollars, the following described tract ____ of land in ____ County, Utah, to wit: (here describe the property).

Witness the hand of said grantor this ____ (month\day\year).

(2) A special warranty deed when executed as required by law shall have the effect of:

(a) a conveyance in fee simple to the grantee, the grantee's heirs, and assigns, of the property named in the special warranty deed, together with all the appurtenances, rights, and privileges belonging to the property; and

(b) a covenant from the grantor, the grantor's heirs, and personal representatives, that:

(i) the granted property is free from all encumbrances made by that grantor; and

(ii) the grantor, the grantor's heirs, and personal representatives will forever warrant and defend the title of the property in the grantee, the grantee's heirs, and assigns against any lawful claim and demand of the grantor and any person claiming or to claim by, through, or under the grantor.

(3) Any exceptions to a covenant described in Subsection (2)(b) may be briefly inserted in the deed following the description of the land.

Enacted by Chapter 213, 2005 General Session

57-1-13. Form of quitclaim deed -- Effect.

(1) A conveyance of land may also be substantially in the following form:

"QUITCLAIM DEED

____ (here insert name), grantor, of ____ (insert place of residence), hereby quitclaims to ____ (insert name), grantee, of ____ (here insert place of residence), for the sum of ____ dollars, the following described tract ____ of land in ____ County, Utah, to wit: (here describe the premises).

Witness the hand of said grantor this ____ (month\day\year).

A quitclaim deed when executed as required by law shall have the effect of a conveyance of all right, title, interest, and estate of the grantor in and to the premises therein described and all rights, privileges, and appurtenances thereunto belonging, at

the date of the conveyance."

(2) For a boundary line agreement operating as a quitclaim deed as described in Section 57-1-45, the boundary line agreement shall include, in addition to a legal description of the agreed upon boundary line:

- (a) the signature of each grantor;
- (b) a sufficient acknowledgment for each grantor's signature; and
- (c) the address of each grantee for assessment purposes.

Amended by Chapter 88, 2011 General Session

57-1-14. Form of mortgage -- Effect.

A mortgage of land may be substantially in the following form:

MORTGAGE

____ (here insert name), mortgagor, of ____ (insert place of residence), hereby mortgages to ____ (insert name), mortgagee, of ____ (insert place of residence), for the sum of ____ dollars, the following described tract ____ of land in ____ County, Utah, to wit: (here describe the premises).

This mortgage is given to secure the following indebtedness (here state amount and form of indebtedness, maturity, rate of interest, by and to whom payable, and where).

The mortgagor agrees to pay all taxes and assessments on said premises, and the sum of ____ dollars attorneys' fee in case of foreclosure.

Witness the hand of said mortgagor this _____ (month\day\year).

A mortgage when executed as required by law shall have the effect of a conveyance of the land therein described, together with all the rights, privileges and appurtenances thereunto belonging, to the mortgagee, his heirs, assigns, and legal representatives, as security for the payment of the indebtedness thereon set forth, with covenants from the mortgagor of general warranty of title, and that all taxes and assessments levied and assessed upon the land described, during the continuance of the mortgage, will be paid previous to the day appointed for the sale of such lands for taxes; and may be foreclosed as provided by law upon any default being made in any of the conditions thereof as to payment of either principal, interest, taxes, or assessments.

Amended by Chapter 75, 2000 General Session

57-1-15. Effect of recording assignment of mortgage.

The recording of an assignment of a mortgage is not in itself considered notice of the assignment to the mortgagor, his heirs, or personal representatives so as to invalidate any payment made by them or either of them to the mortgagee.

Repealed and Re-enacted by Chapter 155, 1988 General Session

57-1-19. Trust deeds -- Definitions of terms.

As used in Sections 57-1-20 through 57-1-36:

(1) "Beneficiary" means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or his successor in interest.

(2) "Trustor" means the person conveying real property by a trust deed as security for the performance of an obligation.

(3) "Trust deed" means a deed executed in conformity with Sections 57-1-20 through 57-1-36 and conveying real property to a trustee in trust to secure the performance of an obligation of the trustor or other person named in the deed to a beneficiary.

(4) "Trustee" means a person to whom title to real property is conveyed by trust deed, or his successor in interest.

(5) "Real property" has the same meaning as set forth in Section 57-1-1.

(6) "Trust property" means the real property conveyed by the trust deed.

Amended by Chapter 155, 1988 General Session

57-1-20. Transfers in trust of real property -- Purposes -- Effect.

Transfers in trust of real property may be made to secure the performance of an obligation of the trustor or any other person named in the trust deed to a beneficiary. All right, title, interest and claim in and to the trust property acquired by the trustor, or the trustor's successors in interest, subsequent to the execution of the trust deed, shall inure to the trustee as security for the obligation or obligations for which the trust property is conveyed as if acquired before execution of the trust deed.

Amended by Chapter 236, 2001 General Session

57-1-21. Trustees of trust deeds -- Qualifications.

(1) (a) The trustee of a trust deed shall be:

(i) any active member of the Utah State Bar who maintains a place within the state where the trustor or other interested parties may meet with the trustee to:

(A) request information about what is required to reinstate or payoff the obligation secured by the trust deed;

(B) deliver written communications to the lender as required by both the trust deed and by law;

(C) deliver funds to reinstate or payoff the loan secured by the trust deed; or

(D) deliver funds by a bidder at a foreclosure sale to pay for the purchase of the property secured by the trust deed;

(ii) any depository institution as defined in Section 7-1-103, or insurance company authorized to do business and actually doing business in Utah under the laws of Utah or the United States;

(iii) any corporation authorized to conduct a trust business and actually conducting a trust business in Utah under the laws of Utah or the United States;

(iv) any title insurance company or agency that:

(A) holds a certificate of authority or license under Title 31A, Insurance Code, to conduct insurance business in the state;

(B) is actually doing business in the state; and

- (C) maintains a bona fide office in the state;
- (v) any agency of the United States government; or
- (vi) any association or corporation that is licensed, chartered, or regulated by the Farm Credit Administration or its successor.

(b) For purposes of this Subsection (1), a person maintains a bona fide office within the state if that person maintains a physical office in the state:

- (i) that is open to the public;
- (ii) that is staffed during regular business hours on regular business days; and
- (iii) at which a trustor of a trust deed may in person:
 - (A) request information regarding a trust deed; or
 - (B) deliver funds, including reinstatement or payoff funds.

(c) This Subsection (1) is not applicable to a trustee of a trust deed existing prior to May 14, 1963, nor to any agreement that is supplemental to that trust deed.

(d) The amendments in Laws of Utah 2002, Chapter 209, to this Subsection (1) apply only to a trustee that is appointed on or after May 6, 2002.

(2) The trustee of a trust deed may not be the beneficiary of the trust deed, unless the beneficiary is qualified to be a trustee under Subsection (1)(a)(ii), (iii), (v), or (vi).

(3) The power of sale conferred by Section 57-1-23 may only be exercised by the trustee of a trust deed if the trustee is qualified under Subsection (1)(a)(i) or (iv).

(4) A trust deed with an unqualified trustee or without a trustee shall be effective to create a lien on the trust property, but the power of sale and other trustee powers under the trust deed may be exercised only if the beneficiary has appointed a qualified successor trustee under Section 57-1-22.

Amended by Chapter 250, 2008 General Session

57-1-21.5. Trustees of trust deeds -- Duties -- Prohibited conduct -- Penalties.

(1) Until a beneficiary under a trust deed or the beneficiary's agent provides a trustee of the trust deed written instructions directing the trustee to exercise powers under this chapter, the trustee has no duty or obligation to the beneficiary or to the agent of a beneficiary.

(2) Except as provided in Subsection (3), the following duties of a trustee may not be delegated:

- (a) a preparation and execution of:
 - (i) a notice of default and election to sell;
 - (ii) a cancellation of notice of default and election to sell;
 - (iii) a notice of sale; and
 - (iv) a trustee's deed;
- (b) the notification of foreclosure through publication, posting, and certified or registered mail;
- (c) the receiving and responding to requests for reinstatement or payoff requirements; and
- (d) the handling of reinstatement or payoff funds.

- (3) Nothing in this section is intended to prevent:
 - (a) a trustee from using clerical or office staff:
 - (i) that is under the trustee's direct and immediate supervision; and
 - (ii) to assist in the duties described in Subsection (2);
 - (b) a trustee from using the services of others for publication, posting, marketing, or advertising the sale; or
 - (c) a beneficiary of a trust deed or the servicing agent of the beneficiary from directly performing the functions described in Subsection (2)(c) or (d).
- (4) The amendments in Laws of Utah 2002, Chapter 209, to Subsection (3) do not apply to a foreclosure if the notice of default related to the foreclosure was filed before May 6, 2002.
- (5) (a) Except as provided in Subsection (5)(c), a trustee may not solicit or receive any fee for referring business to a third party.
 - (b) A fee prohibited under Subsection (5)(a) includes:
 - (i) a commission;
 - (ii) a referral based fee, including a fee for the referral of:
 - (A) title work;
 - (B) posting services; or
 - (C) publishing services; or
 - (iii) a fee similar to a fee described in Subsection (5)(b)(i) or (ii).
 - (c) Subsection (5)(a) does not apply to:
 - (i) a fee received by a trustee for the trustee acting as co-legal counsel, if the trustee is otherwise permitted by law to receive fees as co-legal counsel; or
 - (ii) a nonpreferred participation in net profits based upon an ownership interest or franchise relationship that is not otherwise prohibited by law.
- (6) A trustee may not require the following to pay any costs that exceed the actual costs incurred by the trustee:
 - (a) a trustor reinstating or paying off a loan; or
 - (b) a beneficiary acquiring property through foreclosure.
- (7) (a) A person that violates Subsection (5) or (6) is guilty of a class B misdemeanor.
 - (b) In addition to a person's liability under Subsection (7)(a), if a person violates Subsection (5) or (6), the person is liable to the trustor for an amount equal to the greater of:
 - (i) the actual damages of the trustor as a result of the violation; or
 - (ii) \$1,000.
 - (c) In an action brought under Subsection (7)(b), the party that does not prevail in the action that is brought under Subsection (7)(b) shall pay the attorney fees of the prevailing party.

Amended by Chapter 395, 2013 General Session

57-1-22. Successor trustees -- Appointment by beneficiary -- Effect -- Substitution of trustee -- Recording -- Form.

- (1) (a) The beneficiary may appoint a successor trustee at any time by filing for

record in the office of the county recorder of each county in which the trust property or some part of the trust property is situated, a substitution of trustee.

(b) The new trustee shall succeed to all the power, duties, authority, and title of the trustee named in the deed of trust and of any successor trustee.

(c) The beneficiary may, by express provision in the substitution of trustee, ratify and confirm action taken on the beneficiary's behalf by the new trustee prior to the recording of the substitution of trustee.

(2) A substitution of trustee shall:

(a) identify the trust deed by stating:

(i) the names of the original parties to the trust deed;

(ii) the date of recordation; and

(iii) (A) the book and page where the trust deed is recorded; or

(B) the entry number;

(b) include the legal description of the trust property;

(c) state the name and address of the new trustee; and

(d) be executed and acknowledged by all of the beneficiaries under the trust deed or their successors in interest.

(3) (a) If not previously recorded at the time of recording a notice of default, the successor trustee shall file for record, in the office of the county recorder of each county in which the trust property or some part of it is situated, the substitution of trustee.

(b) A copy of the substitution of trustee shall be sent in the manner provided in Subsection 57-1-26(2) to any:

(i) person who requests a copy of any notice of default or notice of sale under Subsection 57-1-26(1)(a); and

(ii) person who is a party to the trust deed to whom a copy of a notice of default would be required to be mailed by Subsection 57-1-26(3).

(4) A substitution of trustee shall be in substantially the following form:

Substitution of Trustee

(insert name and address of new trustee)

is hereby appointed successor trustee under the trust deed executed by _____ as trustor, in which _____ is named beneficiary and _____ as trustee, and filed for record _____(month\day\year), and recorded in Book _____, Page _____, Records of _____ County, (or filed for record _____(month\day\year), with recorder's entry No. _____, _____ County), Utah.

(Insert legal description)

Signature _____

(Certificate of Acknowledgment)

(5) (a) A trustee of a trust deed may, in accordance with this Subsection (5), resign as trustee by filing for record in the office of the recorder of each county in which the trust property is located, a resignation of trustee.

(b) A trustee's resignation under this Subsection (5) takes effect upon the recording of a resignation of trustee.

(c) A resignation of trustee shall be in substantially the following form:

"Resignation of Trustee

(Insert name and address of trustee) hereby resigns as trustee under the trust deed executed by (insert name of trustor) as trustor, in which (insert name of the beneficiary) is named beneficiary and (insert name of trustee) as trustee, and filed for record (insert the month, day, and year the trust deed was recorded), and recorded in Book ___, Page ___, Records of _____ County, (or with recorder's entry no. ___, _____ County), Utah.

(Insert legal description)

Signature _____

(Certificate of acknowledgment)"

(d) (i) Within three days after the day on which a trustee resigns under this Subsection (5), the trustee shall deliver written notice of the trustee's resignation to each party in any legal action pending against the trustee that is related to or arises from the trustee's performance of a duty of a trustee.

(ii) Except as provided in Subsection (5)(d)(iv), within 10 days after the day on which a party receives a notice described in Subsection (5)(d)(i), the party may move the court to substitute the beneficiary of the trust deed as defendant in the action in the place of the trustee until a successor trustee is appointed. When a successor trustee is appointed, the successor trustee shall be substituted as defendant in place of the beneficiary.

(iii) Except as provided in Subsection (5)(d)(iv), if, after the expiration of the time described in Subsection (5)(d)(ii), a party does not move the court to substitute the beneficiary or the successor trustee in place of the trustee as defendant, the court shall dismiss with prejudice all claims against the withdrawn trustee.

(iv) Subsection (5)(d)(ii) and (5)(d)(iii) do not apply to a cause of action against a trustee that alleges negligent or intentional misconduct by the withdrawn trustee.

(e) (i) The withdrawal of a trustee of a trust deed under this section does not affect the validity or the priority of the trust deed.

(ii) After a trustee withdraws under this part, only a qualified successor trustee appointed by the beneficiary under Section 57-1-22 may exercise trustee powers, including the power of sale.

Amended by Chapter 395, 2013 General Session

57-1-22.5. Notice of assignment of beneficial interest.

(1) A recorded notice of assignment of a beneficial interest, executed by the assigning beneficiary, is prima facie evidence of an assignment of the trust deed as described in the notice.

(2) The notice of assignment of a beneficial interest shall:

(a) state:

(i) the names of the original parties to the trust deed;

(ii) the date the trust deed was recorded;

(iii) (A) the book and page where the trust deed is recorded; or

(B) the entry number where the trust deed is recorded;

(iv) the legal description of the trust property; and

- (v) the name and address of the new beneficiary; and
- (b) be in substantially the following form:

Notice of Assignment of Beneficial Interest

The undersigned hereby gives notice that it assigned and transferred all of its rights, title, and interest under the trust deed described below, together with all of the indebtedness secured thereby, to

(insert name and address of current beneficiary)

The trust deed was executed by _____ as trustor, in which _____ was the named beneficiary, _____ was the named trustee, and it was filed for record _____ (month/date/year), (in Book __, Page __, Records of _____ County Recorder)/(as entry No. _____, _____ County), Utah. This notice of assignment of beneficial interest affects the property located in _____ County, State of Utah, and is described more specifically as follows:

(insert legal description)

Dated _____

Signature

(Certificate of Acknowledgment)

Enacted by Chapter 208, 2013 General Session

57-1-23. Sale of trust property -- Power of trustee -- Foreclosure of trust deed.

The trustee who is qualified under Subsection 57-1-21(1)(a)(i) or (iv) is given the power of sale by which the trustee may exercise and cause the trust property to be sold in the manner provided in Sections 57-1-24 and 57-1-27, after a breach of an obligation for which the trust property is conveyed as security; or, at the option of the beneficiary, a trust deed may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision for it in the trust deed.

Amended by Chapter 236, 2001 General Session

57-1-23.5. Civil liability for unauthorized person who exercises power of sale.

(1) As used in this section:

(a) "Unauthorized person" means a person who does not qualify as a trustee under Subsection 57-1-21(1)(a)(i) or (iv).

(b) "Unauthorized sale" means the exercise of a power of sale by an unauthorized person.

(2) (a) An unauthorized person who conducts an unauthorized sale is liable to the trustor for the actual damages suffered by the trustor as a result of the unauthorized sale or \$2,000, whichever is greater.

(b) In an action under Subsection (2)(a), the court shall award a prevailing plaintiff the plaintiff's costs and attorney fees.

Enacted by Chapter 228, 2011 General Session

57-1-24. Sale of trust property by trustee -- Notice of default.

The power of sale conferred upon the trustee who is qualified under Subsection 57-1-21(1)(a)(i) or (iv) may not be exercised until:

(1) the trustee first files for record, in the office of the recorder of each county where the trust property or some part or parcel of the trust property is situated, a notice of default, identifying the trust deed by stating the name of the trustor named in the trust deed and giving the book and page, or the recorder's entry number, where the trust deed is recorded and a legal description of the trust property, and containing a statement that a breach of an obligation for which the trust property was conveyed as security has occurred, and setting forth the nature of that breach and of the trustee's election to sell or cause to be sold the property to satisfy the obligation;

(2) not less than three months has elapsed from the time the trustee filed for record under Subsection (1); and

(3) after the lapse of at least three months the trustee shall give notice of sale as provided in Sections 57-1-25 and 57-1-26.

Amended by Chapter 236, 2001 General Session

57-1-24.3. Notices to default trustor -- Opportunity to negotiate foreclosure relief.

(1) As used in this section:

(a) "Beneficiary" means a financial institution that is the record owner of the beneficial interest under a trust deed, including a successor in interest.

(b) "Current address" means the address at which a person has agreed or requested to receive notices.

(c) "Default trustor" means a trustor under a trust deed that secures a loan that the beneficiary or servicer claims is in default.

(d) "Financial institution" means:

(i) a state or federally chartered:

(A) bank;

(B) savings and loan association;

(C) savings bank;

(D) industrial bank; or

(E) credit union; or

(ii) any other entity under the jurisdiction of the commissioner of financial institutions as provided in Title 7, Financial Institutions Act.

(e) "Foreclosure relief" means a mortgage modification program or other foreclosure relief option offered by a beneficiary or servicer.

(f) "Loan" means an obligation incurred for personal, family, or household purposes, evidenced by a promissory note or other credit agreement for which a trust deed encumbering owner-occupied residential property is given as security.

(g) "Owner-occupied residential property" means real property that is occupied

by its owner as the owner's primary residence.

(h) "Servicer" means an entity, retained by the beneficiary:

(i) for the purpose of receiving a scheduled periodic payment from a borrower pursuant to the terms of a loan; or

(ii) that meets the definition of servicer under 12 U.S.C. Sec. 2605(i)(2) with respect to residential mortgage loans.

(i) "Single point of contact" means a person who, as the designated representative of the beneficiary or servicer, is authorized to:

(i) coordinate and ensure effective communication with a default trustor concerning:

(A) foreclosure proceedings initiated by the beneficiary or servicer relating to the trust property; and

(B) any foreclosure relief offered by or acceptable to the beneficiary or servicer; and

(ii) represent the beneficiary or servicer with respect to all foreclosure proceedings initiated by the beneficiary or servicer relating to the trust property, including:

(A) the filing of a notice of default under Section 57-1-24 and any cancellation of a notice of default;

(B) the publication of a notice of trustee's sale under Section 57-1-25; and

(C) the postponement of a trustee's sale under Section 57-1-27 or this section.

(2) (a) Before a notice of default is filed for record under Section 57-1-24, a beneficiary or servicer shall:

(i) designate a single point of contact; and

(ii) send written notice to the default trustor at the default trustor's current address or, if none is provided, the address of the property described in the trust deed.

(b) A notice under Subsection (2)(a)(ii) shall:

(i) advise the default trustor of the intent of the beneficiary or servicer to file a notice of default;

(ii) state:

(A) the nature of the default;

(B) the total amount the default trustor is required to pay in order to cure the default and avoid the filing of a notice of default, itemized by the type and amount of each component part of the total cure amount; and

(C) a date, not fewer than 30 days after the day on which the beneficiary or servicer sends the notice, by which the default trustor must pay the amount to cure the default and avoid the filing of a notice of default;

(iii) disclose the name, telephone number, email address, and mailing address of the single point of contact designated by the beneficiary or servicer; and

(iv) direct the default trustor to contact the single point of contact regarding foreclosure relief available through the beneficiary or servicer for which a default trustor may apply, if the beneficiary or servicer offers foreclosure relief.

(3) Before the expiration of the three-month period described in Subsection 57-1-24(2), a default trustor may apply directly with the single point of contact for any available foreclosure relief.

(4) A default trustor shall, within the time required by the beneficiary or servicer, provide all financial and other information requested by the single point of contact to enable the beneficiary or servicer to determine whether the default trustor qualifies for the foreclosure relief for which the default trustor applies.

(5) The single point of contact shall:

(a) inform the default trustor about and make available to the default trustor any available foreclosure relief;

(b) undertake reasonable and good faith efforts, consistent with applicable law, to consider the default trustor for foreclosure relief for which the default trustor is eligible;

(c) ensure timely and appropriate communication with the default trustor concerning foreclosure relief for which the default trustor applies; and

(d) notify the default trustor by written notice of the decision of the beneficiary or servicer regarding the foreclosure relief for which the default trustor applies.

(6) Notice of a trustee's sale may not be given under Section 57-1-25 with respect to the trust property of a default trustor who has applied for foreclosure relief until after the single point of contact provides the notice required by Subsection (5)(d).

(7) A beneficiary or servicer may cause a notice of a trustee's sale to be given with respect to the trust property of a default trustor who has applied for foreclosure relief if, in the exercise of the sole discretion of the beneficiary or servicer, the beneficiary or servicer:

(a) determines that the default trustor does not qualify for the foreclosure relief for which the default trustor has applied; or

(b) elects not to enter into a written agreement with the default trustor to implement the foreclosure relief.

(8) (a) A beneficiary or servicer may postpone a trustee's sale of the trust property in order to allow further time for negotiations relating to foreclosure relief.

(b) A postponement of a trustee's sale under Subsection (8)(a) does not require the trustee to file for record a new or additional notice of default under Section 57-1-24.

(9) A beneficiary or servicer shall cause the cancellation of a notice of default filed under Section 57-1-24 on the trust property of a default trustor if the beneficiary or servicer:

(a) determines that the default trustor qualifies for the foreclosure relief for which the default trustor has applied; and

(b) enters into a written agreement with the default trustor to implement the foreclosure relief.

(10) This section may not be construed to require a beneficiary or servicer to:

(a) establish foreclosure relief; or

(b) approve an application for foreclosure relief submitted by a default trustor.

(11) A beneficiary and servicer shall each take reasonable measures to ensure that their respective practices in the foreclosure of owner-occupied residential property and any foreclosure relief with respect to a loan:

(a) comply with all applicable federal and state fair lending statutes; and

(b) ensure appropriate treatment of default trustors in the foreclosure process.

(12) A beneficiary or servicer is considered to have complied with the

requirements of this section if the beneficiary or servicer designates and uses assigned personnel in compliance with 12 C.F.R. 1024, Real Estate Settlement Procedures Act, or other federal law, rules, regulations, guidance, or guidelines governing the beneficiary or servicer and issued by, as applicable, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, or the Consumer Financial Protection Bureau.

(13) The failure of a beneficiary or servicer to comply with a requirement of this section does not affect the validity of a trustee's sale of the trust property to:

- (a) a bona fide purchaser; or
- (b) a beneficiary of the trust deed after the trust property is sold to a bona fide purchaser.

(14) Subsection (13) does not affect:

- (a) a beneficiary's or a servicer's liability under applicable law; or
- (b) a default trustor's right to pursue other available remedies, including money damages, against a beneficiary or a servicer.

Amended by Chapter 266, 2014 General Session

57-1-24.5. Notice to trustor of intent not to defer notice of sale.

(1) A beneficiary, or the beneficiary's authorized agent, shall deliver or send a notice to a trustor as provided in Subsection (2) if:

- (a) the trust property is residential;
- (b) a notice of default is filed under Section 57-1-24 with respect to the trust property;

(c) during the three-month period described in Subsection 57-1-24(3), the beneficiary or agent agrees to accept reduced payments from the trustor on a temporary basis; and

(d) notwithstanding the reduced payment arrangement, the beneficiary or agent does not intend to instruct the trustee to defer giving notice of sale under Section 57-1-25 later than the earliest time allowed under Subsection 57-1-24(3).

(2) A notice under Subsection (1) shall:

- (a) be in writing;
- (b) (i) be hand delivered to the trustor; or
- (ii) be sent by certified mail, return receipt requested, to the trustor at the address of the trust property;

(c) be delivered or sent on or before the date that is 30 days after the notice of default is filed or 10 days after the beneficiary or agent agrees to accept reduced payments, whichever is later; and

(d) inform the trustor that, despite the reduced payment arrangement, the beneficiary or agent does not intend to instruct the trustee to defer giving notice of sale under Section 57-1-25 later than the earliest time allowed under Subsection 57-1-24(3).

(3) A beneficiary or agent who sends or delivers notice to a trustor under this section shall mail a copy of the notice to the trustee.

(4) The failure of a beneficiary or agent to comply with a requirement of this

section does not affect the validity of a trustee's sale of the trust property.

(5) (a) A beneficiary or agent who fails to send or deliver a notice to a trustor as required in this section is liable to the trustor for the actual damages suffered by the trustor as a result of the failure or \$2,000, whichever is greater.

(b) In an action under Subsection (5)(a), the court shall award a prevailing plaintiff the plaintiff's costs and attorney fees.

Enacted by Chapter 228, 2011 General Session

57-1-25. Notice of trustee's sale -- Description of property -- Time and place of sale.

(1) The trustee shall give written notice of the time and place of sale particularly describing the property to be sold:

(a) by publication of the notice:

(i) (A) at least three times;

(B) once a week for three consecutive weeks;

(C) the last publication to be at least 10 days but not more than 30 days before the date the sale is scheduled; and

(D) in a newspaper having a general circulation in each county in which the property to be sold, or some part of the property to be sold, is situated; and

(ii) in accordance with Section 45-1-101 for 30 days before the date the sale is scheduled;

(b) by posting the notice:

(i) at least 20 days before the date the sale is scheduled; and

(ii) (A) in some conspicuous place on the property to be sold; and

(B) at the office of the county recorder of each county in which the trust property, or some part of it, is located; and

(c) if the stated purpose of the obligation for which the trust deed was given as security is to finance residential rental property:

(i) by posting the notice, including the statement required under Subsection (3)(b):

(A) on the primary door of each dwelling unit on the property to be sold, if the property to be sold has fewer than nine dwelling units; or

(B) in at least two conspicuous places on the property to be sold, in addition to the posting required under Subsection (1)(b)(ii)(A), if the property to be sold has nine or more dwelling units; or

(ii) by mailing the notice, including the statement required under Subsection (3)(b), to the occupant of each dwelling unit on the property to be sold.

(2) (a) The sale shall be held at the time and place designated in the notice of sale.

(b) The time of sale shall be between the hours of 8 a.m. and 5 p.m.

(c) The place of sale shall be clearly identified in the notice of sale under Subsection (1) and shall be at a courthouse serving the county in which the property to be sold, or some part of the property to be sold, is located.

(3) (a) The notice of sale shall be in substantially the following form:

Notice of Trustee's Sale

The following described property will be sold at public auction to the highest bidder, payable in lawful money of the United States at the time of sale, at (insert location of sale) _____ on _____ (month\day\year), at ____m. of said day, for the purpose of foreclosing a trust deed originally executed by ____ (and ____, his wife,) as trustors, in favor of ____, covering real property located at ____, and more particularly described as:

(Insert legal description)

The current beneficiary of the trust deed is _____ and the record owners of the property as of the recording of the notice of default are _____ and _____.

Dated _____ (month\day\year).

Trustee

(b) If the stated purpose of the obligation for which the trust deed was given as security is to finance residential rental property, the notice required under Subsection (1)(c) shall include a statement, in at least 14-point font, substantially as follows:

"Notice to Tenant

As stated in the accompanying Notice of Trustee's Sale, this property is scheduled to be sold at public auction to the highest bidder unless the default in the obligation secured by this property is cured. If the property is sold, you may be allowed under federal law to continue to occupy your rental unit until your rental agreement expires, or until 90 days after the date you are served with a notice to vacate, whichever is later. If your rental or lease agreement expires after the 90-day period, you may need to provide a copy of your rental or lease agreement to the new owner to prove your right to remain on the property longer than 90 days after the sale of the property.

You must continue to pay your rent and comply with other requirements of your rental or lease agreement or you will be subject to eviction for violating your rental or lease agreement.

The new owner or the new owner's representative will probably contact you after the property is sold with directions about where to pay rent.

The new owner of the property may or may not want to offer to enter into a new rental or lease agreement with you at the expiration of the period described above."

(4) The failure to provide notice as required under Subsections (1)(c) and (3)(b) or a defect in that notice may not be the basis for challenging or invalidating a trustee's sale.

(5) A trustee qualified under Subsection 57-1-21(1)(a)(i) or (iv) who exercises a power of sale has a duty to the trustor not to defraud, or conspire or scheme to defraud, the trustor.

Amended by Chapter 228, 2011 General Session

57-1-26. Requests for copies of notice of default and notice of sale -- Mailing by trustee or beneficiary -- Publication of notice of default -- Notice to parties of trust deed.

(1) (a) Any person desiring a copy of any notice of default and of any notice of sale under any trust deed shall file for record a duly acknowledged request for a copy of any notice of default and notice of sale:

(i) in the office of the county recorder of any county in which the trust property or any part of the trust property is situated; and

(ii) at any time:

(A) subsequent to the filing for record of the trust deed; and

(B) prior to the filing for record of a notice of default.

(b) Except as provided in Subsection (3), the request described in Subsection (1)(a) may not be included in any other recorded instrument.

(c) The request described in Subsection (1)(a) shall:

(i) set forth the name and address of the one or more persons requesting copies of the notice of default and the notice of sale; and

(ii) identify the trust deed by stating:

(A) the names of the original parties to the trust deed;

(B) the date of filing for record of the trust deed;

(C) (I) the book and page where the trust deed is recorded; or

(II) the recorder's entry number; and

(D) the legal description of the trust property.

(d) The request described in Subsection (1)(a) shall be in substantially the following form:

REQUEST FOR NOTICE

The undersigned requests that a copy of any notice of default and a copy of notice of sale under the trust deed filed for record _____(month\day\year), and recorded in Book ____, Page ____, Records of ____ County, (or filed for record _____(month\day\year), with recorder's entry number ____, _____ County), Utah, executed by ____ and _____ as trustors, in which ____ is named as beneficiary and ____ as trustee, be mailed to ____ (insert name) ____ at ____ (insert address) _____.

(Insert legal description)

Signature _____

(Certificate of Acknowledgement)

(e) If a request for a copy of a notice of default and notice of sale is filed for record under this section, the recorder shall index the request in:

(i) the mortgagor's index;

(ii) mortgagee's index; and

(iii) abstract record.

(f) Except as provided in Subsection (3), the trustee under any deed of trust is not required to send notice of default or notice of sale to any person not filing a request for notice as described in this Subsection (1).

(2) (a) Not later than 10 days after recordation of a notice of default, the trustee or beneficiary shall mail a signed copy of the notice of default:

(i) by certified or registered mail, with postage prepaid;

(ii) with the recording date shown;

(iii) addressed to each person whose name and address are set forth in a

request that has been recorded prior to the filing for record of the notice of default; and
(iv) directed to the address designated in the request.

(b) At least 20 days before the date of sale, the trustee shall mail a signed copy of the notice of the time and place of sale:

(i) by certified or registered mail, return receipt requested, with postage prepaid;

(ii) addressed to each person whose name and address are set forth in a request that has been recorded prior to the filing for record of the notice of default; and
(iii) directed to the address designated in the request.

(3) (a) Any trust deed may contain a request that a copy of any notice of default and a copy of any notice of sale under the trust deed be mailed to any person who is a party to the trust deed at the address of the person set forth in the trust deed.

(b) A copy of any notice of default and of any notice of sale shall be mailed to any person requesting the notice who is a party to the trust deed at the same time and in the same manner required in Subsection (2) as though a separate request had been filed by each person as provided in Subsection (1) except that a trustee shall include with a signed copy of a notice of default and the signed copy of a notice of sale the following information current as of the time the notice of default and the notice of sale is provided:

(i) the name of the trustee;

(ii) the mailing address of the trustee;

(iii) if the trustee maintains a bona fide office in the state meeting the requirements of Subsection 57-1-21(1)(b), the address of a bona fide office of the trustee meeting the requirements of Subsection 57-1-21(1)(b);

(iv) the hours during which the trustee can be contacted regarding the notice of default and notice of sale, which hours shall include the period during regular business hours in a regular business day; and

(v) a telephone number that the person may use to contact the trustee during the hours described in Subsection (3)(b)(iv).

(4) If no address of the trustor is set forth in the trust deed and if no request for notice by the trustor has been recorded as provided in this section, no later than 15 days after the filing for record of the notice of default, a copy of the notice of default shall be:

(a) mailed to the address of the property described in the notice of default; or

(b) posted on the property.

(5) The following shall not affect the title to trust property or be considered notice to any person that any person requesting copies of notice of default or of notice of sale has or claims any right, title or interest in, or lien or claim upon, the trust property:

(a) a request for a copy of any notice filed for record under Subsection (1) or (3);

(b) any statement or allegation in any request described in Subsection (5)(a); or

(c) any record of a request described in Subsection (5)(a).

Amended by Chapter 209, 2002 General Session

57-1-27. Sale of trust property by public auction -- Postponement of sale.

(1) (a) On the date and at the time and place designated in the notice of sale, the trustee or the attorney for the trustee shall sell the property at public auction to the highest bidder. The trustee, or the attorney for the trustee, may conduct the sale and act as the auctioneer. The trustor, or the trustor's successor in interest, if present at the sale, may direct the order in which the trust property shall be sold, if the property consists of several known lots or parcels which can be sold separately. The trustee or attorney for the trustee shall follow these directions. Any person, including the beneficiary or trustee, may bid at the sale. The trustee may bid for the beneficiary. Each bid is considered an irrevocable offer. If the highest bidder refuses to pay the amount bid by the highest bidder for the property, the trustee, or the attorney for the trustee, shall either:

(i) renounce the sale in the same manner as notice of the original sale is required to be given; or

(ii) sell the property to the next highest bidder.

(b) A bidder refusing to pay the bid price is liable for any loss occasioned by the refusal, including interest, costs, and trustee's and reasonable attorneys' fees. The trustee or the attorney for the trustee may thereafter reject any other bid of that person for the property.

(2) The person conducting the sale may, for any cause he considers expedient, postpone the sale. The person conducting the sale shall give notice of each postponement by public declaration, by written notice or oral postponement, at the time and place last appointed for the sale. No other notice of the postponed sale is required, unless the postponement exceeds 45 days. In that event, the sale shall be renounced in the same manner as the original notice of sale is required to be given.

Amended by Chapter 236, 2001 General Session

57-1-28. Sale of trust property by trustee -- Payment of bid -- Trustee's deed delivered to purchaser -- Recitals -- Effect.

(1) (a) The purchaser at the sale shall pay the price bid as directed by the trustee.

(b) The beneficiary shall receive a credit on the beneficiary's bid in an amount not to exceed the amount representing:

(i) the unpaid principal owed;

(ii) accrued interest as of the date of the sale;

(iii) advances for the payment of:

(A) taxes;

(B) insurance; and

(C) maintenance and protection of the trust property;

(iv) the beneficiary's lien on the trust property; and

(v) costs of sale, including reasonable trustee's and attorney's fees.

(2) (a) (i) Within three business days of the day the trustee receives payment of the price bid, the trustee shall make the trustee's deed available to the purchaser.

(ii) If the trustee does not comply with this Subsection (2)(a), the trustee is liable for any loss incurred by the purchaser because of the trustee's failure to comply with

this Subsection (2)(a).

(b) The trustee's deed may contain recitals of compliance with the requirements of Sections 57-1-19 through 57-1-36 relating to the exercise of the power of sale and sale of the property described in the trustee's deed, including recitals concerning:

- (i) any mailing, personal delivery, and publication of the notice of default;
- (ii) any mailing and the publication and posting of the notice of sale; and
- (iii) the conduct of sale.

(c) The recitals described in Subsection (2)(b):

(i) constitute prima facie evidence of compliance with Sections 57-1-19 through 57-1-36; and

(ii) are conclusive evidence in favor of bona fide purchasers and encumbrancers for value and without notice.

(3) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest, and claim of the trustor and the trustor's successors in interest and of all persons claiming by, through, or under them, in and to the property sold, including all right, title, interest, and claim in and to the property acquired by the trustor or the trustor's successors in interest subsequent to the execution of the trust deed, which trustee's deed shall be considered effective and relate back to the time of the sale.

(4) In accordance with Section 57-3-106, an interest of a purchaser in a trustee's deed that is recorded with the county recorder may not be divested if a person records an affidavit or other document purporting to rescind or cancel the trustee's deed.

Amended by Chapter 381, 2010 General Session

57-1-29. Proceeds of trustee's sale -- Disposition.

(1) (a) The trustee shall apply the proceeds of a trustee's sale in the following order:

(i) first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's and attorney fees actually incurred not to exceed any amount provided for in the trust deed;

(ii) second, to payment of the obligation secured by the trust deed; and

(iii) (A) the balance, if any, to the person or persons legally entitled to the proceeds; or

(B) the trustee, in the trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place.

(b) If the proceeds are deposited with the clerk of the district court, the trustee shall file an affidavit with the clerk setting forth the facts of the deposit and a list of all known claimants, including known addresses.

(c) Upon depositing the balance and filing the affidavit, the trustee is discharged from all further responsibility and the clerk shall deposit the proceeds with the state treasurer subject to the order of the district court.

(2) The clerk shall give notice of the deposited funds to all claimants listed in the trustee's affidavit within 15 days of receiving the affidavit of deposit from the

trustee.

(3) (a) Any claimant may file a petition for adjudication of priority to the funds.

(b) A petitioner requesting funds under Subsection (3)(a) shall give notice of the petition to all claimants listed in the trustee's affidavit and to any other claimants known to the petitioner.

(c) The petitioner's notice under Subsection (3)(b) shall specify that all claimants have 45 days to contest the petition by affidavit or counter-petition.

(d) If no affidavit or counter-petition is filed within 45 days of the notice required by Subsection (3)(c), the court shall, without a hearing, enter an order directing the clerk of the court or the county treasurer to disburse the funds to the petitioner according to the petition.

(4) (a) If a petition for adjudication is contested by affidavit or counter-petition, the district court shall, within 20 days, conduct a hearing to establish the priorities of the parties to the deposited funds and give notice to all known claimants of the date and time of the hearing.

(b) At a hearing under Subsection (4)(a), the court shall establish the priorities of the parties to the deposited funds and enter an order directing the clerk of the court or county treasurer to disburse the funds according to the court's determination.

(5) A person having or claiming to have an interest in the disposition of funds deposited with the court under Subsection (1) who fails to appear and assert the person's claim is barred from any claim to the funds after the entry of the court's order under Subsection (4).

Amended by Chapter 230, 2008 General Session

57-1-30. Sale of trust property by trustee -- Corporate stock evidencing water rights given to secure trust deed.

Shares of corporate stock evidencing water rights used, intended to be used, or suitable for use on the trust property and which are hypothecated to secure an obligation secured by a trust deed may be sold with the trust property, or any part thereof, at the trustee's sale in the manner provided in this act.

Enacted by Chapter 181, 1961 General Session

57-1-31. Trust deeds -- Default in performance of obligations secured -- Reinstatement -- Cancellation of recorded notice of default.

(1) Whenever all or a portion of the principal sum of any obligation secured by a trust deed has, prior to the maturity date fixed in the obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust deed, including a default in the payment of interest or of any installment of principal, or by reason of failure of the trustor to pay, in accordance with the terms of the trust deed, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with terms of the obligation or of the trust deed, the trustor or the trustor's successor in interest in the trust property or any part of the trust property or any other person having a subordinate lien or encumbrance of record

on the trust property or any beneficiary under a subordinate trust deed, at any time within three months of the filing for record of notice of default under the trust deed, if the power of sale is to be exercised, may pay to the beneficiary or the beneficiary's successor in interest the entire amount then due under the terms of the trust deed (including costs and expenses actually incurred in enforcing the terms of the obligation, or trust deed, and the trustee's and attorney's fees actually incurred) other than that portion of the principal as would not then be due had no default occurred, and thereby cure the existing default. After the beneficiary or beneficiary's successor in interest has been paid and the default cured, the obligation and trust deed shall be reinstated as if no acceleration had occurred.

(2) If the default is cured and the trust deed reinstated in the manner provided in Subsection (1), and a reasonable fee is paid for cancellation, including the cost of recording the cancellation of notice of default, the trustee shall execute, acknowledge, and deliver a cancellation of the recorded notice of default under the trust deed; and any trustee who refuses to execute and record this cancellation within 30 days is liable to the person curing the default for all actual damages resulting from this refusal. A reconveyance given by the trustee or the execution of a trustee's deed constitutes a cancellation of a notice of default. Otherwise, a cancellation of a recorded notice of default under a trust deed is, when acknowledged, entitled to be recorded and is sufficient if made and executed by the trustee in substantially the following form:

Cancellation of Notice of Default

The undersigned hereby cancels the notice of default filed for record _____(month\day\year), and recorded in Book _____, Page _____, Records of _____ County, (or filed of record _____(month\day\year), with recorder's entry No. _____, _____ County), Utah, which notice of default refers to the trust deed executed by _____ and _____ as trustors, in which _____ is named as beneficiary and _____ as trustee, and filed for record _____(month\day\year), and recorded in Book _____, Page _____, Records of _____ County, (or filed of record _____(month\day\year), with recorder's entry No. _____, _____ County), Utah.
(legal description)

Signature of Trustee

Amended by Chapter 236, 2001 General Session

57-1-31.5. Reinstatement or payoff statement -- Timeliness of request -- Trustee's duty to provide statement -- Statement to include accounting of costs and fees.

- (1) As used in this section:
- (a) "Approved delivery method" means delivery by:
 - (i) certified or registered United States mail with return receipt requested; or
 - (ii) a nationally recognized letter or package delivery or courier service operating in the state that provides a service for:
 - (A) tracking the delivery of an item; or
 - (B) documenting:

- (I) that the item was received by the intended recipient; or
- (II) a refusal to accept delivery of the item.
- (b) "Compensation" means anything of economic value that is paid, loaned, granted, given, donated, or transferred to a trustee for or in consideration of:
 - (i) services;
 - (ii) personal or real property; or
 - (iii) other thing of value.
- (c) "Interested party" means a person with a right under Subsection 57-1-31(1) to reinstate an obligation secured by a trust deed.
- (d) "Payoff statement" means a statement under Subsection (2) that an interested party requests in order to obtain the amount required to pay off a loan secured by a trust deed.
- (e) "Reinstatement statement" means a statement under Subsection (2) that an interested party requests in order to obtain the amount required under Subsection 57-1-31(1) to reinstate an obligation secured by a trust deed.
- (2) (a) (i) An interested party may submit a written request to a trustee for a statement of the amount required to be paid:
 - (A) to reinstate an obligation secured by a trust deed; or
 - (B) to pay off a loan secured by a trust deed.
- (ii) (A) A request for a reinstatement statement is not timely unless the trustee receives the request at least 10 business days before expiration of the three-month period under Section 57-1-31 to reinstate an obligation.
- (B) A request for a payoff statement is not timely unless the trustee receives the request at least 10 business days before the trustee's sale.
- (iii) An interested party submitting a reinstatement statement or payoff statement to a trustee shall submit the statement to the trustee:
 - (A) at the address specified in the trust deed for notices to the trustee; or
 - (B) at an alternate address approved by the trustee for delivery of mail or notices.
- (iv) A trustee is considered to have received a request submitted under Subsection (2)(a)(i) if:
 - (A) the interested party submitted the request through an approved delivery method; and
 - (B) documentation provided under the approved delivery method indicates that:
 - (I) the request was delivered to the trustee; or
 - (II) delivery of the request was refused.
- (b) (i) A trustee who receives a written request under Subsection (2)(a) shall provide the statement to the interested party.
- (ii) A trustee is considered to have provided the statement requested under Subsection (2)(a) on the date that the trustee deposits the statement with an approved delivery method:
 - (A) with all delivery costs prepaid; and
 - (B) addressed to the interested party at the address provided in the request.
- (c) (i) If the trustee provides a requested reinstatement statement later than five business days after the request is received, the time to reinstate under Section 57-1-31

is tolled from the date of the request to the date that the trustee provides the statement.

(ii) If, after scheduling a trustee's sale, the trustee fails to provide a requested payoff statement within five business days after the request is received, the trustee shall:

(A) cancel the trustee's sale; or

(B) postpone the trustee's sale to a date at least 10 business days after the trustee provides the statement.

(3) A trustee shall include with each statement required under Subsection (2)(a):

(a) a detailed listing of any of the following that the trustor would be required to pay to reinstate or payoff the loan:

(i) attorney fees;

(ii) trustee fees; or

(iii) any costs including:

(A) title fees;

(B) publication fees; or

(C) posting fees; and

(b) subject to Subsection (4), a disclosure of:

(i) any relationship that the trustee has with a third party that provides services related to the foreclosure of the loan; and

(ii) whether the relationship described in Subsection (3)(b)(i) is created by:

(A) an ownership interest in the third party; or

(B) contract or other agreement.

(4) Subsection (3)(b) does not require a trustee to provide a trustor:

(a) a copy of any contract or agreement described in Subsection (3)(b);

(b) specific detail as to the nature of the ownership interest described in Subsection (3)(b); or

(c) the amount of compensation the trustee receives related to the foreclosure of the loan under a relationship described in Subsection (3)(b).

Amended by Chapter 24, 2010 General Session

57-1-32. Sale of trust property by trustee -- Action to recover balance due upon obligation for which trust deed was given as security -- Collection of costs and attorney's fees.

At any time within three months after any sale of property under a trust deed as provided in Sections 57-1-23, 57-1-24, and 57-1-27, an action may be commenced to recover the balance due upon the obligation for which the trust deed was given as security, and in that action the complaint shall set forth the entire amount of the indebtedness that was secured by the trust deed, the amount for which the property was sold, and the fair market value of the property at the date of sale. Before rendering judgment, the court shall find the fair market value of the property at the date of sale. The court may not render judgment for more than the amount by which the amount of the indebtedness with interest, costs, and expenses of sale, including trustee's and attorney's fees, exceeds the fair market value of the property as of the date of the sale.

In any action brought under this section, the prevailing party shall be entitled to collect its costs and reasonable attorney fees incurred.

Amended by Chapter 236, 2001 General Session

57-1-33.1. Reconveyance of a trust deed -- Erroneous reconveyance.

(1) (a) When an obligation secured by a trust deed has been satisfied, the trustee shall, upon written request by the beneficiary, reconvey the trust property.

(b) At the time the beneficiary requests a reconveyance under Subsection (1)(a), the beneficiary shall deliver to the trustee or the trustee's successor in interest the trust deed and the note or other evidence that the obligation securing the trust deed has been satisfied.

(2) The reconveyance under Subsection (1) may designate the grantee as "the person or persons entitled thereto."

(3) If a reconveyance is erroneously recorded by a beneficiary, the effect of the reconveyance may be nullified and the trust deed reinstated by the recording of a corrective affidavit executed by the then current beneficiary describing the trust deed and setting forth the fact of the erroneous reconveyance. Upon the recording of a corrective affidavit or similar instrument, the trust deed has the same priority as it did prior to the erroneous reconveyance. However, any lien or interest that was recorded or attached to the trust deed property between the time of the recording of the erroneous reconveyance and the recording of the corrective affidavit or similar instrument has priority over the reinstated trust deed, unless the lien or interest was recorded or attached with actual knowledge that the trust deed had been reconveyed erroneously.

Amended by Chapter 236, 2001 General Session

57-1-34. Sale of trust property by trustee -- Foreclosure of trust deed -- Limitation of actions.

The trustee's sale of property under a trust deed shall be made, or an action to foreclose a trust deed as provided by law for the foreclosure of mortgages on real property shall be commenced, within the period prescribed by law for the commencement of an action on the obligation secured by the trust deed.

Enacted by Chapter 181, 1961 General Session

57-1-35. Trust deeds -- Transfer of secured debts as transfer of security.

The transfer of any debt secured by a trust deed shall operate as a transfer of the security therefor.

Enacted by Chapter 181, 1961 General Session

57-1-36. Trust deeds -- Instruments entitled to be recorded -- Assignment of a beneficial interest.

Any trust deed, substitution of trustee, assignment of a beneficial interest under a trust deed, notice of assignment of a beneficial interest, notice of default, trustee's deed, reconveyance of the trust property, and any instrument by which any trust deed is subordinated or waived as to priority, if acknowledged as provided by law, is entitled to be recorded. The recording of an assignment of a beneficial interest under a trust deed or a notice of assignment of a beneficial interest does not in itself impart notice of the assignment to the trustor, or the trustor's heirs or personal representatives, so as to invalidate any payment made by the trustor, or the trustor's heirs or personal representatives, to the person holding the note, bond, or other instrument evidencing the obligation by the trust deed.

Amended by Chapter 208, 2013 General Session

57-1-37. Failure to disclose not a basis for liability.

(1) The failure of an owner of real property to disclose that the property being offered for sale is stigmatized is not a material fact that must be disclosed in the transaction of real property.

(2) Neither an owner nor his agent is liable for failing to disclose that the property is stigmatized.

Amended by Chapter 5, 1991 General Session

57-1-38. Release of security interest.

(1) As used in this section:

(a) "Revolving credit line" means an agreement between the borrower and a secured lender who agrees to loan the borrower money on a continuing basis so long as the outstanding principal amount owed by the borrower does not exceed a specified amount.

(b) "Secured lender" means:

- (i) a mortgagee on a mortgage;
- (ii) a beneficiary on a trust deed;
- (iii) a person that holds or retains legal title to real property as security for financing the purchase of the real property under a real estate sales contract; and
- (iv) any other person that holds or retains a security interest in real property to secure the repayment of a secured loan.

(c) (i) "Secured loan" means a loan or extension of credit, the repayment of which is secured by a mortgage, a trust deed, the holding or retention of legal title under a real estate sales contract, or other security interest in real property, whether or not the security interest is perfected.

(ii) A judgment award secured by a judgment lien is not of itself a secured loan. A subsequent written agreement between a judgment creditor and a judgment debtor concerning payment of the judgment is a secured loan if it otherwise qualifies under the definition in Subsection (1)(c)(i).

(d) "Security interest" means an interest in real property that secures payment or performance of an obligation. Security interest includes a lien or encumbrance.

(e) "Servicer" means a person that services and receives loan payments on behalf of a secured lender with respect to a secured loan.

(2) This section may not be interpreted to validate, invalidate, alter, or otherwise affect the foreclosure of a mortgage, the exercise of a trustee's power of sale, the exercise of a seller's right of reentry under a real estate sales contract, or the exercise of any other power or remedy of a secured lender to enforce the repayment of a secured loan.

(3) A secured lender or servicer who fails to release the security interest on a secured loan within 90 days after receipt of the final payment of the loan is liable to another secured lender on the real property or the owner or titleholder of the real property for:

(a) the greater of \$1,000 or treble actual damages incurred because of the failure to release the security interest, including all expenses incurred in completing a quiet title action; and

(b) reasonable attorneys' fees and court costs.

(4) A secured lender or servicer is not liable under Subsection (3) if the secured lender or servicer:

(a) has established a reasonable procedure to release the security interest on a secured loan in a timely manner after the final payment on the loan;

(b) has complied with this procedure in good faith; and

(c) is unable to release the security interest within 90 days after receipt of the final payment because of the action or inaction of an agency or other person beyond its direct control.

(5) A secured lender under a revolving credit line shall close the revolving credit line and release the security interest if the secured lender receives:

(a) payment in full from a third party involved in a sale or loan transaction affecting the security interest; and

(b) (i) a request from a third party for full payoff of the credit line; or

(ii) a written request to close the credit line.

Amended by Chapter 235, 2006 General Session

57-1-39. Definitions.

As used in Sections 57-1-40 and 57-1-44:

(1) "Beneficiary" means the record owner of the beneficiary's interest under a trust deed, including successors in interest.

(2) "Deliver" or "delivered" means by:

(a) overnight delivery by a reputable carrier;

(b) United States certified mail or express mail;

(c) hand delivery with receipt acknowledged in writing; or

(d) facsimile or electronic mail belonging to the beneficiary, mortgagee, or servicer.

(3) "Mortgage" is as described in Section 57-1-14.

(4) "Mortgagee" means the record owner of the mortgagee's interest under a mortgage, including a successor in interest.

(5) "Satisfactory evidence of the full payment of the obligation secured by a trust deed or mortgage" means written information adequate, in the opinion of a title insurer or title agent, to establish that the obligation secured by the trust deed or mortgage has been paid in full.

(6) "Servicer" means a person or entity that collects loan payments on behalf of a beneficiary or mortgagee.

(7) "Title agent" means a title insurance producer licensed as an organization under Title 31A, Chapter 23a, Part 2, Producers and Consultants.

(8) "Title insurer" means a title insurer authorized to conduct business in the state under Title 31A, Chapter 23a, Part 2, Producers and Consultants.

(9) "Trust deed" is as defined in Subsection 57-1-19(3).

Amended by Chapter 250, 2006 General Session

57-1-40. Reconveyance of trust deed or release of mortgage -- Procedures -- Forms.

(1) A title insurer or title agent may reconvey a trust deed or release a mortgage in accordance with the provisions of Subsections (2) through (6) if:

(a) the obligation secured by the trust deed or mortgage has been fully paid by the title insurer or title agent;

(b) the obligation secured by the trust deed or mortgage has been partially paid by the title insurer or title agent in an amount agreed to by the beneficiary, mortgagee, or servicer as sufficient to release the mortgage or reconvey the trust deed; or

(c) the title insurer or title agent possesses satisfactory evidence that an event described in either Subsection (1)(a) or (b) has occurred.

(2) A title insurer or title agent may reconvey a trust deed or release a mortgage under Subsection (1) regardless of whether the title insurer or title agent is named as a trustee under a trust deed or has the authority to release a mortgage.

(3) After the obligation secured by the trust deed or mortgage is paid in full or is partially paid as described in Subsection (1)(b), the title insurer or title agent shall deliver a notice of intent to release or reconvey, as described in Subsection (4), to the beneficiary, mortgagee, or servicer at:

(a) the address specified in the trust deed or mortgage;

(b) any address for the beneficiary or mortgagee specified in the last recorded assignment of the trust deed or mortgage;

(c) any address for the beneficiary, mortgagee, or servicer specified in a request for notice recorded under Section 57-1-26; or

(d) the address shown on any payoff statement received by the title insurer or agent from the beneficiary, mortgagee, or servicer.

(4) The notice of intent to release or reconvey shall contain the name of the beneficiary or mortgagee and the servicer if loan payments on the trust deed or mortgage are collected by a servicer, the name of the title insurer or title agent, the date, and be substantially in the following form:

NOTICE OF INTENT TO RELEASE OR RECONVEY

Notice is hereby given to you as follows:

1. This notice concerns the (trust deed or mortgage) described as follows:

(Trustor or Mortgagor): _____

(Beneficiary or Mortgagee): _____

Recording information: _____

Entry Number: _____

Book Number: _____

Page Number: _____

2. The undersigned claims or possesses satisfactory evidence that the obligation secured by the trust deed or mortgage was paid in full or that the obligation secured by the trust deed or mortgage was partially paid in an amount agreed to by the beneficiary, mortgagee, or servicer as sufficient to release the mortgage or reconvey the trust deed.

3. The undersigned will fully release the mortgage or reconvey the trust deed described in this notice unless, within 60 days from the date stated on this notice, the undersigned has received by certified mail a notice stating that the obligation secured by the trust deed or mortgage has not been paid in full, that payment of an amount less than the whole obligation was not agreed to or was not received by the beneficiary, mortgagee, or servicer, or that the beneficiary, mortgagee, or servicer otherwise objects to the release of the mortgage or the reconveyance of the trust deed. Notice shall be mailed to the address stated on this form.

(Signature of title insurer or title agent)

(Address of title insurer or title agent)

(5) (a) If, within 60 days from the day on which the title insurer or title agent delivered the notice of intent to release or reconvey in accordance with Subsections (3) and (4), a reconveyance of trust deed or release of mortgage is not recorded, and the beneficiary, mortgagee, or servicer does not send by certified mail to the title insurer or title agent a notice that the obligation secured by the trust deed or mortgage has not been paid in full, that payment of an amount less than the whole obligation was not agreed to or was not received by the beneficiary, mortgagee, or servicer, or that the beneficiary, mortgagee, or servicer objects to the release of the mortgage or reconveyance of the trust deed, the title insurer or title agent may execute, acknowledge, and record a reconveyance of a trust deed or release of a mortgage.

(b) A reconveyance of a trust deed under Subsection (5)(a) shall be in substantially the following form:

RECONVEYANCE OF TRUST DEED

(Name of title insurer or title agent), a (title insurer or title agent) authorized to conduct business in the state does hereby reconvey, without warranty, the following trust property located in (name of county) County, state of Utah, that is covered by a trust deed naming (name of trustor) as trustor, and (name of beneficiary) as beneficiary and was recorded on (date) in Book _____ at Page _____ as Entry Number _____: (insert a description of the trust property.)

The undersigned title insurer or title agent certifies as follows:

1. The undersigned title insurer or title agent:

a. has fully paid the obligation secured by the trust deed;

b. has partially paid the obligation secured by the trust deed in an amount

agreed to by the beneficiary or servicer as sufficient to reconvey the trust deed;

c. possesses satisfactory evidence of full payment of the obligation secured by the trust deed; or

d. possesses satisfactory evidence of partial payment of the obligation secured by the trust deed in an amount agreed to by the beneficiary or servicer as sufficient to reconvey the trust deed.

2. In accordance with the requirements of Utah Code Annotated Subsections 57-1-40(3) and (4), the title insurer or title agent delivered to the beneficiary or servicer, a notice of intent to release or reconvey and a copy of the reconveyance.

3. The trust deed has not been reconveyed and the title insurer or title agent did not receive, within 60 days from the day on which the title insurer or title agent delivered the notice of intent to release or reconvey, a notice from the beneficiary or servicer sent by certified mail that the obligation secured by the trust deed has not been paid in full, that payment of an amount less than the whole obligation secured by the trust deed was not agreed to or was not received by the beneficiary or servicer, or that the beneficiary or servicer objects to the reconveyance of the trust deed.

(Notarization)

(Signature of title insurer or title agent)

(c) A release of a mortgage under Subsection (5)(a) shall be in substantially the following form:

RELEASE OF MORTGAGE

(Name of title insurer or title agent), a (title insurer or title agent) authorized to conduct business in the state does hereby release the mortgage on the following property located in (name of county) County, state of Utah, that is covered by a mortgage naming (name of mortgagor) as mortgagor, and (name of mortgagee) as mortgagee and was recorded on (date) in Book _____ at Page _____ as Entry Number _____: (insert a description of the trust property.)

The undersigned title insurer or title agent certifies as follows:

1. The undersigned title insurer or title agent:

a. has fully paid the obligation secured by the mortgage;

b. has partially paid the obligation secured by the mortgage in an amount agreed to by the mortgagee or servicer as sufficient to release the mortgage;

c. possesses satisfactory evidence of full payment of the obligation secured by the mortgage; or

d. possesses satisfactory evidence of partial payment of the obligation secured by the mortgage in an amount agreed to by the mortgagee or servicer as sufficient to release the mortgage.

2. In accordance with the requirements of Utah Code Annotated Subsections 57-1-40(3) and (4), the title insurer or title agent delivered to the mortgagee or servicer a notice of intent to release or reconvey.

3. The mortgage has not been released and the title insurer or title agent did not receive, within 60 days from the day on which the title insurer or title agent delivered the notice of intent to release or reconvey, a notice from the mortgagee or servicer sent by certified mail that the obligation secured by the mortgage has not been paid in full,

that payment of an amount less than the whole obligation secured by the mortgage was not agreed to or was not received by the mortgagee or servicer, or that the mortgagee or servicer objects to the release of the mortgage.

(Notarization)

(Signature of title insurer or title agent)

(d) (i) A release of mortgage or reconveyance of trust deed that is executed and notarized in accordance with Subsection (5)(b) or (c) is entitled to recordation.

(ii) (A) Except as provided in Subsection (5)(d)(ii)(B), a reconveyance of a trust deed or release of a mortgage that is recorded under Subsection (5)(d)(i) is valid regardless of any deficiency in the release or reconveyance procedure not disclosed in the release of mortgage or reconveyance of trust deed.

(B) If the title insurer's or title agent's signature on a release of mortgage or reconveyance of trust deed recorded under Subsection (5)(d)(ii)(A) is forged, the release of mortgage or reconveyance of trust deed is void.

(6) A release of mortgage or reconveyance of trust deed under this section does not, by itself, discharge any promissory note or other obligation that was secured by the trust deed or mortgage at the time the trust deed was reconveyed or the mortgage was released.

(7) This section does not limit or modify the application of Section 57-1-33.1.

Amended by Chapter 403, 2013 General Session

57-1-40.5. Partial reconveyance of trust deed or release of mortgage -- Procedures -- Forms.

(1) (a) If a trustor or mortgagor pledges more than one parcel of real property as collateral under a trust deed or mortgage, the beneficiary, mortgagee, or servicer may agree for a sum certain to release a portion of the real property pledged on the trust deed or mortgage when a sum certain is paid.

(b) When the sum certain is paid, a title insurer or title agent may partially convey a trust deed or partially release a mortgage in accordance with the provisions of Subsections (2) through (6) if:

(i) the sum certain that is part of the obligation secured by the trust deed or mortgage has been paid by the title insurer or title agent to release or reconvey a portion of the real property pledged as collateral; or

(ii) the title insurer or title agent possesses satisfactory evidence of the payment of the sum certain thus authorizing release or reconveyance of a portion of the real property pledged.

(2) A title insurer or title agent may partially reconvey a trust deed or partially release a mortgage under Subsection (1) regardless of whether the title insurer or title agent is named as a trustee under a trust deed or has the authority to release a mortgage.

(3) At the time the obligation secured by the trust deed or mortgage is paid as required by Subsection (1), or at any later time, the title insurer or title agent shall deliver a notice of intent to partially release or partially reconvey, and a copy of the

partial release or partial reconveyance that is to be recorded, as described in Subsection (4), to the beneficiary, mortgagee, or servicer at:

- (a) the address specified in the trust deed or mortgage;
- (b) any address for the beneficiary or mortgagee specified in the last recorded assignment of the trust deed or mortgage;
- (c) any address for the beneficiary, mortgagee, or servicer specified in a request for notice recorded under Section 57-1-26; or
- (d) the address shown on any payoff statement received by the title insurer or agent from the beneficiary, mortgagee, or servicer.

(4) The notice of intent to partially release or partially reconvey shall:

- (a) contain the name of:
 - (i) the beneficiary or mortgagee;
 - (ii) the servicer, if any;
 - (iii) the title insurer or title agent;
- (b) contain the date; and
- (c) be substantially in the following form:

NOTICE OF INTENT TO PARTIALLY RELEASE OR PARTIALLY RECONVEY

Notice is hereby given to you as follows:

1. This notice concerns the (trust deed or mortgage) described as follows:
(Trustor or

Mortgagor): _____

(Beneficiary or

Mortgagee): _____

Recording

Information: _____

Entry

Number: _____

Book

Number: _____

Page

Number: _____

2. To release only a portion of the real property pledged as collateral, the undersigned claims to have paid or possess satisfactory evidence of the payment of a sum certain necessary to release or reconvey a specific portion of the real property pledged as collateral under the mortgage or trust deed.

3. Within 60 days after the date stated on this notice, the undersigned will partially release the mortgage or partially reconvey the trust deed described in this notice unless the undersigned receives by certified mail a notice stating that the sum certain that is part of the obligation secured by the trust deed or mortgage has not been paid or that you otherwise object to the partial release of the mortgage or the partial reconveyance of the trust deed. Notice shall be mailed to the address stated on this form.

4. A copy of the partial release of mortgage or partial reconveyance of trust deed is enclosed with this Notice.

(Signature of title insurer or title

agent)

(Address of title insurer or title agent)

(5) (a) If, within 60 days after the day on which the title insurer or title agent delivered the notice of intent to partially release or partially reconvey in accordance with Subsections (3) and (4), a partial reconveyance of trust deed or partial release of mortgage is not recorded, and the beneficiary, mortgagee, or servicer does not send by certified mail to the title insurer or title agent a notice that the obligation secured by the trust deed or mortgage has not been paid or that the beneficiary, mortgagee, or servicer objects to the partial release of the mortgage or partial reconveyance of the trust deed, the title insurer or title agent may execute, acknowledge, and record a partial reconveyance of a trust deed or partial release of a mortgage.

(b) A partial reconveyance of a trust deed under Subsection (5)(a) shall be in substantially the following form:

PARTIAL RECONVEYANCE OF TRUST DEED

(Name of title insurer or title agent), a (title insurer or title agent) authorized to conduct business in the state reconveys, without warranty, only on the following trust property located in (name of county) County, state of Utah, that is covered by a trust deed naming (name of trustor) as trustor, and (name of beneficiary) as beneficiary and was recorded on (date) in Book _____ at Page _____ as Entry Number _____: (insert a description of the specific trust property to be reconveyed.)

The undersigned title insurer or title agent certifies as follows:

1. To release only this portion of the real property pledged as collateral, the undersigned has paid or possesses satisfactory evidence of the payment of a sum certain necessary to reconvey a specific portion of the real property pledged as collateral under the trust deed.
2. In accordance with the requirements of Utah Code Subsections 57-1-40.5(3) and (4), the title insurer or title agent delivered to the beneficiary or servicer, a notice of intent to partially release or partially reconvey and a copy of the partial reconveyance.
3. The trust deed has not been reconveyed, as to this property, and the title insurer or title agent did not receive, within 60 days after the day the title insurer or title agent delivered the notice of intent to partially release or partially reconvey, a notice from the beneficiary or servicer sent by certified mail stating the sum certain necessary to reconvey a specific portion of the real property pledged as collateral under the trust deed or that the beneficiary or servicer objects to the partial reconveyance of the trust deed.

(Notarization)
agent)

(Signature of title insurer or title agent)

(c) A release of a mortgage under Subsection (5)(a) shall be in substantially the following form:

PARTIAL RELEASE OF MORTGAGE

(Name of title insurer or title agent), a (title insurer or title agent) authorized to conduct business in the state partially releases the mortgage only on the following property located in (name of county) County, state of Utah, that is covered by a mortgage naming (name of mortgagor) as mortgagor, and (name of mortgagee) as

mortgagee and was recorded on (date) in Book _____ at Page _____ as Entry Number _____: (insert a description of the specific property.)

The undersigned title insurer or title agent certifies as follows:

1. To release only this portion of the real property pledged as collateral, the undersigned has paid or possesses satisfactory evidence of the payment of a sum certain necessary to release a specific portion of the real property pledged as collateral under the mortgage.

2. In accordance with the requirements of Utah Code Subsections 57-1-40.5(3) and (4), the title insurer or title agent delivered to the mortgagee or servicer, a notice of intent to partially release or partially reconvey and a copy of the partial release.

3. The trust deed has not been released, as to this property, and the title insurer or title agent did not receive, within 60 days after the day the title insurer or title agent delivered the notice of intent to partially release or partially reconvey, a notice from the beneficiary or servicer sent by certified mail stating the sum certain necessary to release a specific portion of the real property pledged as collateral under the mortgage or that the mortgagee or servicer objects to the partial release of the mortgage.

(Notarization)
agent)

(Signature of title insurer or title agent)

(d) (i) A partial release of mortgage or partial reconveyance of trust deed that is executed or notarized in accordance with Subsection (5)(b) or (c) is entitled to be recorded.

(ii) (A) Except as provided in Subsection (5)(d)(ii)(B), a partial reconveyance of a trust deed or partial release of a mortgage that is recorded under Subsection (5)(d)(i) is valid regardless of any deficiency in the partial release or reconveyance procedure not disclosed in the partial release of mortgage or partial reconveyance of trust deed.

(B) If the title insurer's or title agent's signature on a partial release of mortgage or partial reconveyance of trust deed recorded under Subsection (5)(d)(ii)(A) is forged, the partial release of the mortgage or partial reconveyance of trust deed is void.

(6) A partial release of mortgage or partial reconveyance of trust deed under this section does not, by itself, discharge any promissory note or other obligation secured by the trust deed or mortgage at the time the trust deed is partially reconveyed or the mortgage is partially released.

Enacted by Chapter 250, 2006 General Session

57-1-41. Objections to reconveyance or release.

A title insurer or title agent may not record a reconveyance of trust deed or release of mortgage if, within 60 days from the day on which the title insurer or title agent delivered or mailed the notice of intent to release or reconvey in accordance with Subsections 57-1-40(3) and (4), the beneficiary, mortgagee, or servicer sends a notice that:

(1) the obligation secured by the trust deed or mortgage has not been paid in full;

(2) payment of an amount less than the whole obligation was not agreed to or

was not received by the beneficiary, mortgagee, or servicer; or

(3) the beneficiary, mortgagee, or servicer objects to the release of the mortgage or reconveyance of the trust deed under Subsection 57-1-40(5)(a).

Amended by Chapter 403, 2013 General Session

57-1-42. Liability of title insurer or title agent.

A title insurer or title agent purporting to act under the provisions of Section 57-1-40 who reconveys a trust deed or releases a mortgage is liable to the beneficiary or mortgagee for the damages suffered as a result of the reconveyance if:

(1) the obligation secured by the trust deed or mortgage:

(a) has not been fully paid; or

(b) has not been partially paid in an amount agreed to by the beneficiary, mortgagee, or servicer as sufficient to release the mortgage or reconvey the trust deed; and

(2) (a) the title insurer or title agent failed to comply with the provisions of Sections 57-1-40 and 57-1-41; or

(b) the title insurer or title agent acted with gross negligence or in bad faith in reconveying the trust deed.

Amended by Chapter 403, 2013 General Session

57-1-43. Application of provisions.

The provisions of Sections 57-1-39 through 57-1-42 apply to any obligation secured by a trust deed or mortgage that was paid prior to, on, or after May 1, 1995.

Enacted by Chapter 185, 1995 General Session

57-1-44. Other sections not affected.

Sections 57-1-39 through 57-1-43 do not excuse a beneficiary, mortgagee, trustee, secured lender, or servicer from complying with the provisions of Section 57-1-38.

Enacted by Chapter 185, 1995 General Session

57-1-45. Boundary line agreements.

(1) If properly executed and acknowledged as required under this chapter, an agreement between property owners designating the boundary line between their properties, when recorded in the office of the recorder of the county in which the property is located, shall act as a quitclaim deed and convey all of each party's right, title, interest, and estate in property outside the agreed boundary line that had been the subject of the boundary dispute that led to the boundary line agreement.

(2) A boundary line agreement described in Subsection (1) shall include:

(a) a legal description of the agreed upon boundary line;

(b) the signature of each grantor;

- (c) a sufficient acknowledgment for each grantor's signature; and
- (d) the address of each grantee for assessment purposes.

Amended by Chapter 88, 2011 General Session

57-1-46. Transfer fee and reinvestment fee covenants.

(1) As used in this section:

(a) "Association expenses" means expenses incurred by a common interest association for:

- (i) the administration of the common interest association;
- (ii) the purchase, ownership, leasing, construction, operation, use, administration, maintenance, improvement, repair, or replacement of association facilities, including expenses for taxes, insurance, operating reserves, capital reserves, and emergency funds;

- (iii) providing, establishing, creating, or managing a facility, activity, service, or program for the benefit of property owners, tenants, common areas, the burdened property, or property governed by the common interest association; or

- (iv) other facilities, activities, services, or programs that are required or permitted under the common interest association's organizational documents.

(b) "Association facilities" means any real property, improvements on real property, or personal property owned, leased, constructed, developed, managed, or used by a common interest association, including common areas.

(c) "Burdened property" means the real property that is subject to a reinvestment fee covenant or transfer fee covenant.

(d) "Common areas" means areas described within:

- (i) the definition of "common areas and facilities" under Section 57-8-3; and
- (ii) the definition of "common areas" under Section 57-8a-102.

(e) "Common interest association":

- (i) means:

- (A) an association, as defined in Section 57-8a-102;

- (B) an association of unit owners, as defined in Section 57-8-3; or

- (C) a nonprofit association; and

- (ii) includes a person authorized by an association, association of unit owners, or nonprofit association, as the case may be.

(f) "Large master planned development" means an approved development:

- (i) of at least 500 acres or 500 units; and

- (ii) that includes a commitment to fund, construct, develop, or maintain:

- (A) common infrastructure;

- (B) association facilities;

- (C) community programming;

- (D) resort facilities;

- (E) open space; or

- (F) recreation amenities.

(g) "Nonprofit association" means a nonprofit corporation organized under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, to benefit, enhance, preserve,

govern, manage, or maintain burdened property.

(h) "Organizational documents":

(i) for an association, as defined in Section 57-8a-102, means governing documents as defined in Section 57-8a-102;

(ii) for an association of unit owners, as defined in Section 57-8-3, means a declaration as defined in Section 57-8-3; and

(iii) for a nonprofit association:

(A) means a written instrument by which the nonprofit association exercises powers or manages, maintains, or otherwise affects the property under the jurisdiction of the nonprofit association; and

(B) includes articles of incorporation, bylaws, plats, charters, the nonprofit association's rules, and declarations of covenants, conditions, and restrictions.

(i) "Reinvestment fee covenant" means a covenant, restriction, or agreement that:

(i) affects real property; and

(ii) obligates a future buyer or seller of the real property to pay to a common interest association, upon and as a result of a transfer of the real property, a fee that is dedicated to benefitting the burdened property, including payment for:

(A) common planning, facilities, and infrastructure;

(B) obligations arising from an environmental covenant;

(C) community programming;

(D) resort facilities;

(E) open space;

(F) recreation amenities;

(G) charitable purposes; or

(H) association expenses.

(j) "Transfer fee covenant":

(i) means an obligation, however denominated, expressed in a covenant, restriction, agreement, or other instrument or document:

(A) that affects real property;

(B) that is imposed on a future buyer or seller of real property, other than a person who is a party to the covenant, restriction, agreement, or other instrument or document; and

(C) to pay a fee upon and as a result of a transfer of the real property; and

(ii) does not include:

(A) an obligation imposed by a court judgment, order, or decree;

(B) an obligation imposed by the federal government or a state or local government entity; or

(C) a reinvestment fee covenant.

(2) A transfer fee covenant recorded on or after March 16, 2010 is void and unenforceable.

(3) (a) Except as provided in Subsection (3)(b), a reinvestment fee covenant may not be sold, assigned, or conveyed unless the sale, assignment, or conveyance is to a common interest association that was formed to benefit the burdened property.

(b) A common interest association may assign or pledge to a lender the right to

receive payment under a reinvestment fee covenant if:

- (i) the assignment or pledge is as collateral for a credit facility; and
- (ii) the lender releases the collateral interest upon payment in full of all amounts that the common interest association owes to the lender under the credit facility.

(4) A reinvestment fee covenant recorded on or after March 16, 2010 is not enforceable if the reinvestment fee covenant is intended to affect property that is the subject of a previously recorded transfer fee covenant or reinvestment fee covenant.

(5) A reinvestment fee covenant recorded on or after March 16, 2010 may not obligate the payment of a fee that exceeds .5% of the value of the burdened property, unless the burdened property is part of a large master planned development.

(6) (a) A reinvestment fee covenant recorded on or after March 16, 2010 is void and unenforceable unless a notice of reinvestment fee covenant, separate from the reinvestment fee covenant, is recorded in the office of the recorder of each county in which any of the burdened property is located.

(b) A notice under Subsection (6)(a) shall:

- (i) state the name and address of the common interest association to which the fee under the reinvestment fee covenant is required to be paid;

- (ii) include the notarized signature of the common interest association's authorized representative;

- (iii) state that the burden of the reinvestment fee covenant is intended to run with the land and to bind successors in interest and assigns;

- (iv) state that the existence of the reinvestment fee covenant precludes the imposition of an additional reinvestment fee covenant on the burdened property;

- (v) state the duration of the reinvestment fee covenant;

- (vi) state the purpose of the fee required to be paid under the reinvestment fee covenant; and

- (vii) state that the fee required to be paid under the reinvestment fee covenant is required to benefit the burdened property.

(c) A recorded notice of reinvestment fee covenant that substantially complies with the requirements of Subsection (6)(b) is valid and effective.

(7) (a) A reinvestment fee covenant or transfer fee covenant recorded before March 16, 2010 is not enforceable after May 31, 2010, unless:

- (i) a notice that is consistent with the notice described in Subsection (6) is recorded in the office of the recorder of each county in which any of the burdened property is located; or

- (ii) a notice of reinvestment fee covenant or transfer fee covenant, as described in Subsection (7)(b), is recorded in the office of the recorder of each county in which any of the burdened property is located.

(b) A notice under Subsection (7)(a)(ii) shall:

- (i) include the notarized signature of the beneficiary of the reinvestment fee covenant or transfer fee covenant, or the beneficiary's authorized representative;

- (ii) state the name and current address of the beneficiary under the reinvestment fee covenant or transfer fee covenant;

- (iii) state that the burden of the reinvestment fee covenant or transfer fee covenant is intended to run with the land and to bind successors in interest and

assigns; and

(iv) state the duration of the reinvestment fee covenant or transfer fee covenant.

(c) A recorded notice of reinvestment fee covenant or transfer fee covenant that substantially complies with the requirements of Subsection (7)(b) is valid and effective.

(8) A reinvestment fee covenant recorded on or after March 16, 2010 may not be enforced upon:

(a) an involuntary transfer;

(b) a transfer that results from a court order;

(c) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity;

(d) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or

(e) the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of a common interest association's costs directly related to the transfer of the burdened property, not to exceed \$250.

Enacted by Chapter 16, 2010 General Session